

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

Civil Action No. \_\_\_\_\_

Dennis Oelschlager

Plaintiff,

vs.

BNSF Railway Company

Defendant.

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COMPLAINT AND JURY DEMAND

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Plaintiff Dennis Oelschlager, by and through his attorneys, Donald F. D'Antuono, Schnell & D'Antuono, Denver, Colorado and Terry C. Dougherty, Esq., Woods & Aitken, Lincoln, Nebraska, for his Complaint against BNSF Railway Company (BNSF), a corporation, alleges and states as follows:

**GENERAL AND JURISDICTIONAL ALLEGATIONS**

1. Plaintiff brings this action under the provisions of Title 45, Sections 1-60 of the United States Code, regulations promulgated under the authority of those sections, and other federal railroad safety laws which have been incorporated therein by decision, of which Sections 1 through 60 are commonly known and referred to as the Federal Employers' Liability Act, and under the terms of that Act, this Court has jurisdiction.

2. At all times herein mentioned, Defendant was a corporation engaged in the business of owning, maintaining and operating a line and system of railroad which extended through Lincoln, Nebraska, and Defendant both does business and conducts substantial railroad operations in this judicial district. Further, and to the extent that Plaintiff complains of substantial and disabling knee symptoms as a result of the events complained of, and set forth below, significant work capacity evaluation relative to Plaintiff's injuries will be rendered by specific providers in the Lincoln, Nebraska area.

3. At all times herein mentioned, Defendant was an interstate carrier by rail and was engaged in interstate transportation and commerce.

4. At the time of the occurrence for which this action is brought, Plaintiff was employed by Defendant as its servant and employee and part or all of Plaintiff's duties were in the furtherance of interstate commerce or directly, closely and substantially affected interstate commerce.

5. Both Plaintiff and his employer, the Defendant herein, were engaged in interstate commerce within the meaning of the Federal Employers' Liability Act and their mutual rights and liabilities were governed and controlled by that Act at the time of the occurrence for which this action is commenced.

#### FIRST CAUSE OF ACTION

6. Plaintiff realleges paragraphs 1 through 5 above.

7. On or about September 2, 2005, and during the early afternoon hours, Plaintiff was engaged in performing his duties, namely, as a carman in or about Defendant's North Yard

at the Havelock Shops in Lincoln, Nebraska. At such time, Plaintiff, as a carman, was working with two other carman and a carman leadman attempting to rerail a locomotive unit which had derailed on a track. As part and parcel of this job task, Plaintiff Dennis Oeschlager had been directed to wedge a 150 pound jack under said unit and Plaintiff was in fact on his knees on the southwest end of the unit attempting to wedge it under the unit.

8. At the time and place aforementioned, and while in the process of attempting to so wedge the heavy jack under the southwest end of the locomotive unit, and while on his knees with both hands on said heavy jack, Plaintiff was caused to suffer severe and disabling injuries to his left knee and he immediately felt pain and a burning sensation in his left knee. When he tried to stand up, his left knee locked up on him. A fellow employee and carman necessarily rendered assistance to help him up from his knees.

9. At the time and place aforesaid, Defendant, by and through his agents and employees was then and there guilty of one or more of the following acts of negligence in violation of the Federal Employers' Liability Act, Title 45, Section 51-60 of the United States Code:

- A. Failure to provide reasonably safe and adequate policies and procedures for the rerailing of a locomotive unit such the Plaintiff was required to attempt to move a heavy jack under a locomotive unit while in a kneeling, twisting, and physically torqued position;
- B. Failure to provide proper and reasonably safe tools and equipment for the performance of such job task of rerailing a locomotive unit, including, but

not limited to, utilizing a crane to lift the unit, which crane was or should have been available to lift said locomotive unit;

- C. Failure to provide necessary and reasonably safe construction for the performance of the job task of moving a jack under the subject locomotive unit such that Plaintiff was forced to try to move this heavy 150 pound jack, on his knees and with both hands on said heavy jack, in a kneeling, twisted and physically torqued position;
- D. Failure to reasonably maintain the track, track foundation, and track ballast in the North Yard, Havelock Shops such that the subject locomotive spread the yard track rails and derailed.
- E. Failure to provide a reasonable safe place to work.

10. One or more of the aforesaid wrongful acts of Defendant in whole or in part contributed to injure Plaintiff so as to cause severe and permanent injuries to his left knee and other body parts and damages with resultant past, present and future pain and suffering, discomfort, psychological impairment, anxiety, temporary total disability, permanent partial disability, diminution of earning capacity, partial loss of enjoyment of living, medical and hospital expense, wage and benefit loss (and mental and emotional distress and injury), some of which conditions are permanent in nature.

WHEREFORE, Plaintiff requests judgment against Defendant in an amount to be determined at trial of this matter, together with his costs and disbursements, such interest as allowed by law, and for such other and further relief as this Court deems proper.

PLAINTIFF DEMANDS TRIAL BY JURY.

DATED this 26<sup>th</sup> day of February, 2009.

Respectfully submitted,

DENNIS OELSCHLAGER, Plaintiff

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